PUBLIC PROSECUTOR

v.

RAJENDRA PRASAD NN SRINIVASA NAIDU

HIGH COURT, SINGAPORE
TAN TEOW YEOW JC
[CRIMINAL CASE NO. 18 OF 1989]
30 JUNE 1990

CRIMINAL PROCEDURE: *Rape - Robbery - Recording of statement by accused - Whether accused was assaulted and forced to give his statement - Defence of consent - Injuries on complainant's body - Penal Code (Cap. 224) [Sing], ss. 376(2), 392 - Criminal Procedure Code [Sing] s. 122(6).*

The accused was charged with two offences of rape under section 376(2) and the offence of robbery under s. 392 of the Penal Code. After his arrest, a statement was recorded from the accused in which he stated, *inter alia*, that he slapped the complainant and hit her head against the wall when she refused to have sexual intercourse with him. In another statement he said that he took the complainant's pager because he was afraid that she would report him to the police.

At the trial, during which time the accused gave his evidence on oath, he claimed that his two statements were made under duress because the police had assaulted him. The trial Judge, however, disbelieved the accused and held (after a *voir dire*) that the statement was voluntarily given.

Held:

[1] Discrepancies in the complainant's story are minor in nature and the Court accepted the complainant as a witness of truth.

[2] The injuries on the complainant's body are consistent with her evidence that she was assaulted; the fact that she left the scene without her pants and sandals and made her police report at the first available opportunity demonstrated her veracity as a witness of truth.

[3] The Court was satisfied beyond a reasonable doubt that the accused had committed the offence charged.

[Accused convicted.]

Legislation referred to:
Criminal Procedure Code [Sing], ss. 18, 122(6)
Penal Code (Chapter 224) [Sing], ss. 71, 376(2), 392

For the public prosecutor - Chua Eng Hui; M/s. Attorney-General's Chambers
For the accused - M G Guru; Guru & Partners

JUDGMENT

Tan Teow Yeow JC:

The accused was convicted with three charges. The charges read as follows:

> First charge:
>
> You, Rajendra Prasad s/o N N Srinivasa Naidu, are charged that you on or about 23 August 1988 between 7pm and 7.30pm at an un-numbered building off Margaret Drive, Singapore, committed rape on one Tay Chui Hoon and in order to commit the said offence voluntarily

caused hurt to her by using a piece of concrete to hit her on the head and punching and slapping her in the face and you have thereby committed an offence punishable under s. 376(2) of the Penal Code, Chapter 224.

Second Charge:

You, Rajendra Prasad s/o N N Srinivasa Naidu, are charged that you on or about 23 August 1988 between 7.15pm and 7.45pm at an un-numbered building off Margaret Drive, Singapore, committed rape on one Tay Chui Hoon and in order to commit the said offence voluntarily caused hurt to her by using a piece of concrete to hit her on the head and punching and slapping her in the face and you have thereby committed an offence punishable under s. 376(2) of the Penal Code, Chapter 224.

Third Charge:

You, Rajendra Prasad s/o N N Srinivasa Naidu, are charged that you on or about 23 August 1988 between 7.45pm and 8.15pm at an un-numbered building off Margaret Drive, Singapore, committed robbery of S$43 in cash and a radio Pager No. 7027939 in the possession of one Tay Chui Hoon and you have thereby committed an offence punishable under s. 392 of the Penal Code, Chapter 224.

On 23 August 1988 the complainant then a 19 year-old factory girl, who stayed in Ang Mo Kio, went down to Outram Park to obtain some sleeping pills from a clinic for herself. After she had obtained and consumed the pills, she went and sat down on a stone bench on the ground floor of Outram Park. The time was about 3pm then. While seated there, she was approached by a man called Ricky Sim who chatted her up. They were soon joined by the accused, a 17 year-old Indian boy who was Ricky Sim's friend. The accused spoke and conversed with the other two in very fluent Hokkien. Ricky Sim suggested that all three of them should go to the Singapore Armed Forces Reservists' Association (SAFRA) to play jackpot.

All three of them proceeded to SAFRA at Bukit Merah but the accused was not able to gain entrance into SAFRA because he was underage. The three of them then proceeded to the Alexandra Village Hawker Centre and there they consumed some beer. After they had finished drinking, Ricky Sim suggested that they return to Outram Park to obtain some more sleeping pills from the clinic. They returned to Outram Park and Ricky Sim proceeded to the clinic which was situated at the second level of the block of flats and obtained some "Upjohn" pills. He gave five pills to the complainant to consume. Later the accused pulled the complainant aside and told her to go with him to see a friend who would give her 200 Upjohn pills for free as his friend could manufacture these pills. Upon hearing this, the complainant agreed and followed the accused to Margaret Drive. There he was led by the accused to a small stone building behind the playfield of Hua Yi Secondary School. The accused told her that his friend who could supply the pills was inside the stone building. According to the complainant, while she was outside the entrance of the stone building, the accused pushed her into the building. She wanted to run out of the building upon seeing that there was no one inside but the accused caught hold of her. There was a struggle and she was assaulted by the accused. The accused pushed her down to the floor and assaulted her and hit her with a piece of stone on the head. She bled and the accused ordered her to undress saying he wanted to have sexual intercourse with her. She reluctantly undressed and was raped inside the building. She said she was raped twice by the accused with an interval of 15 minutes in between. After she was raped she said the accused searched her belongings, took her radio pager and her money and left the scene. It was getting dark then. She groped in the dark and found her lighter. With the light she managed to retrieve her brassiere, her

panties and her shirt, but she could not locate her Bermuda pants and her sandals. After she had put on her brassiere, panties and shirt whilst still looking for other belongings of hers, she claimed that she saw ghosts. She was frightened, threw away her lighter and ran out of the stone building. In the dark she managed to go through the undergrowth and scaled the fence, came out of the school and on to the main road. There she met a passer-by and enquired what place it was and what time it was. The passer-by told her that the place was Margaret Drive and the time was 9pm. She waited and managed to hail a taxi and persuaded the taxi-driver to send her back to her Ang Mo Kio home.

On reaching her home her mother and sister were there and they discovered that she was bleeding and had injuries over various parts of her body. She was bare-footed and did not have pants on. The complainant narrated the fact that she was raped and robbed by an Indian boy to her mother and sister. They then decided to make a police report.

First they went to Ang Mo Kio Police Station and there, after making a very brief report, they were referred to the Tanglin Police Station. They went to Tanglin Police Station as directed and from there she brought Police Constable Richard Tan and Sgt. Chin to the scene but it was dark then and they were unable to locate the building.

Her case was again referred to the Clementi Police Station for further investigation. There at the early hour of the morning of 24 August 1988 she was sent for her medical check-up. The doctor who examined her discovered altogether seven injuries on her body including a laceration over her head. The doctor also discovered fresh hymenal tears at 3 and 5 o'clock.

Later in the morning on 24 August 1988 at about 11am, Inspector Dicky Wee, Investigation Officer in this case, was led by the complainant to the scene of the incident at Margaret Drive. This time the complainant managed to locate the building. Inside the stone building, various items of the complainant's belongings were found scattered on the floor including her pair of Bermuda pants and her pair of sandals.

On 25 August 1988, the complainant paged for the accused at about 12 noon. The accused phoned her back and she asked the accused to return her the pager. The accused agreed and arranged to meet her at Outram Park. There the accused returned her the pager and proceeded to go upstairs to the coffee house where they joined Ricky Sim. Whilst at the coffee house, the complainant tried in vain to contact Inspector Dicky Wee, but was told that Inspector Dicky Wee was not in the office. When asked in Court why did she try to contact Inspector Dicky Wee, she answered that she wanted to call Inspector Dicky Wee to arrest the accused and Ricky Sim.

On the next day, that is 26 August 1988, Inspector Dicky Wee visited the complainant whilst she was at work in the factory. During the interview, the complainant's pager sounded. The complainant then narrated what happened on 25 August 1988 to Inspector Dicky Wee. She checked the pager and discovered that it was the accused who was calling her. Inspector Dicky Wee then instructed her to arrange for a meeting with the accused. She did so and arranged to meet the accused at Outram Park again. At about 2pm that afternoon, the accused showed up with Ricky Sim and they were promptly arrested.

Ricky Sim gave evidence at the trial. His testimony merely confirmed the various meetings he had with the other two on 23 August 1988, 25 August 1988 and 26 August 1988, the day the accused was arrested. He however also gave evidence that the accused had visited him at his flat on 24 August 1988 at 7.30pm in the evening and told him that he had beaten up the complainant and had sexual intercourse with her. The accused then lived in the same

block of flat as Ricky Sim. After his arrest at about 2pm on 26 August 1988, the accused was brought back to the Criminal Investigation Department (CID). At 3.17pm the same day he was sent for a medical examination at the Singapore General Hospital (SGH) and thereafter he was brought back to the CID where two statements were recorded from him under s. 122(6) of the Criminal Procedure Code.

At the conclusion of the statement he was again brought back to the SGH for another examination at 6.37pm. Both doctors who examined him before and after the recording of the statements did not detect any visible injury on his body. The accused however did complain to the first doctor who examined him at 3.17pm that he had been beaten on his chest and his soles. Dr. Lim Soon Beng who examined him recorded down his complaint but did not see any injury on him. Dr. Lim who testified in Court that when he touched the accused's chest during the examination, the accused had overreacted and hence he had recorded this down by using the word "hyper-reaction". The accused had objected to the admission of these two police statements on the ground that he was assaulted and was forced to give the statements.

After hearing the evidence from both the prosecution and the accused who also testified in the trial within a trial, I have decided that both these statements were voluntarily given by the accused to the police and I therefore allowed their admission as evidence.

The first statement was given by the accused in answer to the rape charge and it reads:

> The girl, Ah Hoon told me that she wanted to take me as a boyfriend. She gave her home and pager telephone number. I brought her to an un-numbered building somewhere off Margaret Drive on the pretext of buying 'Upjohn' pills. She agreed to follow me. Both of us took a bus and on arrival at Margaret Drive, we walked to the building. Inside the building, I told her that I wanted to have sexual intercourse with her but she refused. I slapped her 3 times on the face and hit her head against the wall. She told me that she agreed to have sexual intercourse with me. She undressed herself fully and I took out my trousers and underwear. I then had sexual intercourse by laying on top of her. I inserted my penis into her vagina but I did not ejaculate. After the sexual intercourse I left her alone and I left the building. At that time I was afraid. Later, about 1 hour, I returned to the building as I was afraid that she might have died because of the head injuries. When I returned I found that she was not there. I noticed that her white pants were lying at the entrance.

The second statement was given by the accused in answer to the robbery charge and it reads:

> Inside the building I asked Ah Hoon to hand over her pager to me but she refused to do so. Later, after having sexual intercourse with her, I took her pager from her trousers pocket. I was afraid that she would report me to the police as I had given her my home number. When I returned home I found S$4 inside the telephone book and I had spent the money. I wish to add that with the permission from her I took her pager.

At the end of the prosecution case, I found that a case had been made out for the accused to answer and I therefore called upon him to enter his defence. He elected to give evidence on oath. In his defence he did not deny that he had sexual intercourse with the complainant on 23 August 1988 in the stone building off Margaret Drive. His defence is one of consent, i.e., that the complainant consented to have sexual intercourse with him.

In his evidence he said he first met the complainant on 22 August 1988 when he was approached by the complainant for money. He gave her S$2 to go home. He met the complainant again the next day on 23 August 1988 and was introduced to her by Ricky Sim.

They went to Alexandra Village and had some beer. After that they returned to Outram Park where Ricky Sim went up to the clinic to obtain some Upjohn pills.

When Ricky Sim was away the complainant told him that she loved him and when he questioned her about her sincerity, she again confided and re-affirmed her love for him. After Ricky Sim returned with the pills, he said the complainant consumed all the tablets given to her by Ricky Sim and when Ricky Sim left to go to the toilet, he and the complainant exchanged their respective home telephone numbers. When Ricky Sim failed to return the accused went to the toilet to look for him but could not locate Ricky Sim. He then left with the complainant to Alexandra Road and there they went to a sarabat stall to have a drink. After the drink they took a slow walk to Margaret Drive and sat at the bus stop outside the school field. There the accused said he asked the complainant whether she minded having sexual intercourse with him if she really loved him. The complainant, according to the accused, replied that she could have sexual intercourse with him provided the accused promised to marry her. With that promise he then brought the complainant to the stone building behind the school field.

Inside the building they kissed each other and he took off her clothings. He then had sexual intercourse with her. After that they both smoked cigarettes and had a talk. The accused asked the complainant whether he could borrow the complainant's pager. She agreed. He then asked her to leave the stone building together with him but she refused and started scolding him. As a result he was angry. So he left the building alone leaving the complainant behind. He did not use any force on the complainant before having sex with her. He also narrated the meeting on 25 August 1988 after the complainant called him and subsequently met him at Outram Park with Ricky Sim. There they spent many hours together and the complainant was all the while happy with their company. He denied that he committed any of the offences charged.

At the conclusion of the defence case I considered the evidence produced by the prosecution together with that produced by the defence.

I have taken into account the fact that the complainant had consumed some pills before the incident. I was satisfied that at the time of the incident she was conscious, knew what had transpired and was able to narrate the events afterwards, first to the taxi driver, then to her mother and sister and subsequently to the police. She was at least able to walk the distance with the accused from Alexandra Road to the stone building off Margaret Drive before the incident. She was also able to persuade the taxi driver to help her find her way home. Although she claimed that she had seen ghosts inside the building, but that was to be expected from a girl who was raped, assaulted, robbed and left in a strange deserted place all by herself in darkness with the only light from a cigarette lighter. She was not very accurate as to the exact time of the incidents or the duration of the events on 23 August 1988. There were some minor discrepancies between her evidence in Court and her first police report to the Ang Mo Kio Police Station. There were also some minor discrepancies in her evidence with regard to some of her personal belongings left behind at the stone building. I nevertheless accepted her as a witness of truth. The events immediately following the incident were such that it could not have been a case of a girl who had consented and who had sexual intercourse with her lover. The injuries on the body also supported her evidence that she was assaulted. The fact that she left the scene without her pants and sandals and made her police report at the first available opportunity also served to demonstrate her veracity as a witness of truth.

The narration by the accused of the incident of a romantic love affair between two young lovers suddenly turned sour for no apparent reason at all was most unconvincing. I disbelieved him. Subsequent meetings and phone calls between the parties were not significant as the complainant had by then reported to the police and had led the police to the scene of crime. I accepted the complainant's evidence and rejected the evidence of the accused.

I was satisfied beyond a reasonable doubt that the accused had committed the offences charged and I therefore convicted him on all the three charges. I sentenced the accused to 10 years imprisonment and 12 strokes on the cane on the first charge. I did not pass any sentence on the second charge as I was of the view that the second charge comes under the purview of s. 71 of the Penal Code. I sentenced the accused to 2 years imprisonment and 6 strokes of the cane on the third charge of robbery and ordered that the sentence of imprisonment to run concurrently with that of the first charge. I did not order the sentence to run consecutively with that of the first charge because I am of the view that s. 18 of the Criminal Procedure Code does not apply to offences falling within the description of s. 71 of the Penal Code.

Also found at [1990] 2 CLJ 516